

STATE OF WASHINGTON

MIKE KREIDLER
STATE INSURANCE COMMISSIONER

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OFFICE OF
INSURANCE COMMISSIONER

In The Matter Of:

ARCADIAN HEALTH PLAN, INC,

No. D07-0205

CONSENT ORDER
LEVYING A FINE

A Registered Health Care
Service Contractor,

FINDINGS OF FACT:

1. Arcadian Health Plan, Inc. ("AHP") is a Washington domiciled health care service contractor that has been registered to do business in the State of Washington since 2004 and is wholly owned by a Delaware company, Arcadian Management Services, Inc. ("AMS").
2. At the time of AHP's initial registration in Washington, 3,055,000 shares of voting stock of AMS were outstanding, approximately 43.11 percent of which was then owned by Dr. John Austin, 12.29 percent of which was then owned by Ken Zimmerman, 11.62 percent of which was then owned by Acacia Venture Partners, 11.62 percent of which was then owned by Three Arch Partners, and 11.47 percent of which was then owned by Cheryl Perkins. No other stockholders at that time owned or controlled ten percent or more of the outstanding AMS shares.
3. After AHP's initial registration in 2004, AMS issued additional shares of Preferred Series B stock and converted some of the existing Preferred Series A stock to Preferred Series B-1 stock. These additional shares of Preferred Series B and Preferred Series B-1 stock were issued and sold without obtaining a solicitation permit from the Washington Office of Insurance Commissioner and Dr. Austin's ownership percentage was reduced to approximately 31.1% percent, and Ken Zimmerman, Cheryl Perkins, Three Arch Partners' and Acacia Venture Partners' ownership percentages were each reduced below ten percent.
4. In 2005, AMS raised approximately nineteen million dollars by issuing Preferred Series C stock to five limited partnership funds controlled by Morgan Stanley entities and to five limited partnership funds controlled by Three Arch Partners. As a result of these transactions, the Morgan Stanley controlled entities owned approximately 16.8 percent of the

outstanding voting shares of AMS, Three Arch Partners owned approximately 27.3 percent of the outstanding voting shares of AMS, and Dr. Austin owned approximately 23.8 percent of the outstanding voting shares of AMS.

5. When the OIC staff learned of these transactions and changes in control through AHP's 2005 Form B filing and notified AHP of the OIC's concerns, disclaimers of control were filed on behalf of the acquiring entities. These disclaimers were subsequently withdrawn, and the applications for solicitation permits and Form A notices of change of control were filed.
6. The OIC Company Supervision Division has reviewed the applications for solicitation permits and has determined that the applications, although submitted after the fact, are complete and otherwise in compliance with RCW 48.06.180, and such permits have now been issued.
7. The Form A applications submitted on behalf of the entities that acquired more than ten percent of the outstanding voting shares of AMS subsequent to AHP's initial registration have been referred to the OIC's Chief Hearing Officer to conduct a hearing to determine whether the changes in control should be approved.

Based upon the foregoing Findings of Fact, the Commissioner makes the following:

CONCLUSIONS OF LAW

1. RCW 48.05.185 authorizes the Insurance Commissioner to impose a fine in lieu of the suspension or revocation of a company's license.
2. Arcadian Health Plan committed the following violations of Washington law:
 - a. The Company's failure and that of its parent to apply for and obtain solicitation permits prior to issuing and selling additional shares of preferred stock violated RCW 48.06.180.
 - b. The Company's failure and that of its parent and the acquiring entities to file preacquisition Form A notices prior to changes in the ownership and control of AMS violated RCW 48.31C.030.

CONSENT TO ORDER

NOW, THEREFORE, Arcadian Health Plan consents to the following in consideration of its desire to resolve this matter without further administrative or judicial proceedings, and the Insurance Commissioner consents to settle the matter in consideration of the Company's payment of a fine and such other terms and conditions as are set forth below:

1. Arcadian Health Plan consents to entry of the foregoing Findings of Fact and Conclusions of Law, consents to the entry of this Order, and waives further administrative or judicial challenge to the OIC's actions related to the subject matter of the Order;

2. Within thirty days of the entry of this Order, Arcadian Health Plan agrees to pay to the OIC a fine in the amount of \$20,000, of which \$5,000 is suspended for a period of thirty months on condition that Arcadian Health Plan and its parent shall not violate the provisions of the Washington State Insurance Code which are the subject of this Order;

3. Failure to pay the fine set forth in paragraph two shall constitute grounds for the revocation of the Company's registration and authority and for the recovery of the full fine, including the suspended portion; and

4. Arcadian Health Plan understands and agrees that this Order does not constitute or reflect an OIC determination that any changes in, or acquisitions of, control that have taken place are approved under RCW 48.31C.030(5), which determination shall be the subject of the hearing that will be held on the Form A acquisition of control notices, and that this Order is without prejudice to any remedies that may be found appropriate following said hearing.

EXECUTED this 20th day of July, 2007.

ARCADIAN HEALTH PLAN, INC.

By: 

Typed Name: John H. Austin

Typed Corporate Title: CEO

ORDER OF THE INSURANCE COMMISSIONER

NOW, THEREFORE, pursuant to the foregoing Findings of Fact, Conclusions of Law, and Consent to Order, the Insurance Commissioner hereby orders as follows:

1. Arcadian Health Plan, Inc. is ordered to pay a fine in the amount of \$20,000 of which amount the sum of \$5,000 is suspended upon the condition that the Company fully comply with the laws and regulations of the State of Washington which are the subject of this Order for the next thirty months;

2. The Company's failure to pay the fine within the time limit set forth above shall result in the revocation of the Company's registration and authority to conduct business in the state as a health care services contractor and in the recovery of both the suspended and unsuspended amounts of the fine through a civil action brought on behalf of the Insurance Commissioner by the Attorney General of the State of Washington.

ENTERED AT TUMWATER, WASHINGTON, this 24th day of July, 2007.

MIKE KREIDLER,
Insurance Commissioner

By: Charles D. Brown
Charles D. Brown
Staff Attorney
Legal Affairs Division